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## ABSTRACT

There are grounds for concern about testing's relationship to the law because where a constitutional issue is involved, the burden of proof of need for the test immediately shifts to educators. Throughout the history of testing in this country, the courts have often intervened to assure that students, while they are in school, are free from discrimination, either in word or act, by school officials. Upon a prima facie showing of discriminatory impact, those doing the testing must demonstrate the rationality of the testing procedures and the validity of the tests. In a case presenting the clearest summary of the requirements of proper validation, the court set up four hurdles that the defendant must clear. First, the test must have differential validity, that is, it must have separate validation scores for all minorities. Second, the level of confidence for the test must be at the .05 level. Third, the testing procedure must contain an adequate sample. Fourth, the test must have been administered to all under uniform conditions--the local use of the test must closely conform to the sample, purpose, and conditions used in the test's validation. (Author/IRT)

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SCHOOL TESTING, GROUPING AND THE LAW

M. Chester Nolte

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A paper presented at the 21st annual convention of the National  
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## SCHOOL TESTING, GROUPING AND THE LAW

M. Chester Nolte

On every faculty there is an individual who just loves to play the role of the devil's advocate. In our institution, that individual goes by the name of Raymond (not his real name, of course), and he's one of my closest friends; although we often differ on viewpoints, we still respect and value each other's integrity. Occasionally, he tends to become unreasonable about this or that educational practice he considers out of line. One of Raymond's pet peeves lately is the subject of pupil testing, which he contends has gotten all out of hand.

"Educators want to play God," complains Raymond. "They seem to think their tests are fool-proof. Luckily, the courts are now moving in to keep them in line, and that's all to the good."

I asked Raymond what he meant--"playing God." He explained that it all began long ago in biblical times.

"Biblical times?" I asked.

"Yes, biblical times--in Genesis, actually. The first testing began in the beginning, when God looked upon the world that he had made, and declared that it was very good. Now, some misguided educators seem to think that they too can operate under a royal imprimatur passed along to them from on high, that they now inherit the golden key to unlock the inner mysteries of educational testing and grouping." While I respect Raymond's loss of patience with sloppy testing in school, I can't get as worked up as he does over the widespread inequalities he claims now exist.

"Testing has become the cornerstone of all public education," wailed Raymond. "We've become nothing but a profession of 'sorters'. When God told Adam and Eve to enjoy the Garden of Eden, he avoided telling them what the consequences might be of eating from the forbidden tree, and our teeth have been aching ever since. Adam and Eve got trapped--they had no idea what monumental debt they and their progeny would be saddled with were they to flunk the test--which, of course, they did. They forfeited Paradise, and doomed us thereby to an endless round of sorting, screening, diagnosing, identifying, tracking, labeling, grouping, classifying, comparing and categorizing people ad infinitum. The schools have become nothing more than sorting machines to determine who gets scarce jobs and who does not. Why can't educators realize that much of what we do isn't scientifically defensible, much less legally fair? There ought to be a law!"

I reminded Raymond that many states have discussed bills to limit the "brain-probing" type of test, but that they had been soundly defeated in most. I reminded him also that the past five years have seen heavy emphasis on attempts to remedy bad practice in testing and assignment of pupils. His idea about the eternal cost of failing the apple test was new to me--I'd heard numerous curses attributed to the act of original sin, but never that education is forever deviled with testing as a direct result.

I decided to investigate just how valid Raymond's theories on testing might be, particularly as they relate to current law. What I found was that Raymond wasn't crying "wolf-wolf"--that indeed there are grounds for some concern. I found too that many educators are in real trouble should they

good<sup>f</sup> up on testing, because where a constitutional issue is involved, the burden of proof of need for the test immediately shifts to educators, where of course, it should have been all along. Since the legal aspects of school testing bear some pitfalls, here is what I found.

#### Roots of Testing Programs

The first American tests of school effectiveness were oral examinations given by colonial school committees to determine pupil orthodoxy and whether those pupils had gained enough reading skills to keep ahead of that Olde Deluder Satan. Many years were to go by before Dr. J. M. Rice devised a spelling scale in 1894, now said to be the first achievement test in this country. At the turn of the century, the works of Thorndike, Binet, and Therman increased interest in developing tests of intelligence, which were administered to immigrants entering Ellis Island on their way to becoming "Americans." Because southern Europeans, Asians, and Chinese did poorly on these tests, they were allocated lower immigration quotas than those persons who came from northern Europe, the British Isles, and Russia, who did better on the tests. It was felt that at last, science could be applied to the problem of educating hordes of immigrants.\* World War I gave a tremendous shot in the arm to the testing movement when the Army Alpha and Beta tests were devised as expeditors of the war effort. The Roaring Twenties saw an enormous proliferation of the idea that children could and should be grouped homogeneously, and by 1929, fully 70% of the cities in this country followed some form of homogeneous grouping pattern in schools.

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\*An interesting side-light occurred when, in addition to the IQ tests, psychologists seriously worked hard on developing a Moral Quotient (MQ) or a Religious Quotient (RQ), but reluctantly gave it up as a bad job. Today, with more enlightenment, we can perceive that their failure<sup>↑</sup> was an inability to understand the 'affective' domain. <sup>due to</sup>

You may recall another landmark of the 1920's--the Oregon case in 1925, in which the Supreme Court held that "the child is not the mere creature" of the State, that parents have a parental prerogative in the upbringing of their own children. A state may not standardize its children by forcing them to conform to a single state-operated pattern of education. The Twenties likewise saw the High Court strike down state statutes in Nebraska and Iowa which invoked penalties for teaching German to children below the eighth grade. In effect, these cases established the child's unfettered right to learn, to know, and to have a protected area of interest which the state cannot invade.\*

By 1943, the courts had come to protect the right to learn by giving notice to state officials that they could not administer unconstitutional tests as a condition of school attendance. In the landmark decision in West Virginia State Board of Education v. Barnette, the Supreme Court held that excluding a child from school for failure to salute the flag, even though the country was at war, was an unfair test of loyalty. In a 6-3 decision, Mr. Justice Jackson wrote for the majority:

As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program of public education officials shall compel youth to unite in embracing. . . .If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. . . .Boards of education have important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. . . .One's right to life, liberty,

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\* The movement to guarantee children a right to know was an extension of the "Lernfreiheit" prominent in the Prussian University in the early 1800's, and introduced into this country mainly through the influence of Horace Mann.

and property, to free speech, a free press, freedom of worship and assembly may not be submitted to vote; they depend on the outcomes of no elections. . . .

Thus, the idea that a minority child (a member of Jehovah's Witnesses) might assert a right against a majority testing principle and come out victorious was further strengthened on the basis of a religious test. It is amazing to me, that despite the fact that Mr. Justice Jackson's principle of law/<sup>was clearly defined, it</sup> has failed to reach the consciences of many educators even today, thirty-two years later. The principle is that even in wartime a nation as diverse, and as pluralistic as ours defies educational standardization. Even the tests we use are indicative of this failure--they are known as "standardized" tests, and educators place a great deal of confidence in their teaching by noting the extent to which children in their schools are similar to other children throughout the country. While similarities are of course important, they cannot form the basis of our testing program, simply because such a posture places a penalty however slight, and however subtle, upon being "difference<sup>t</sup>"--which is equated to<sup>being</sup> "inferior." This was pointed out by Mr. Chief Justice Warren when he wrote that different facilities for the races are "inherently" unequal. On that occasion, for a unanimous Court, Warren wrote that

Classifying pupils by race 'generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. . . .' We conclude that in the field of public education the doctrine of separate but equal has no place. Separate educational facilities are inherently unequal. . . . Today, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. . . .

Thus, the essential quality of the educational freedom movement, which was articulated in the Warren opinion in Brown (1954) was this: every child, though different from all other children, is entitled to equal treatment by the state. The doctrine recognizes differences, but disallows different treatment of individuals merely because they are different. The distinction is of more than passing interest. It says in effect that the schools are not here to erase all our social ills, to eradicate poverty, disease, inherited characteristics, and the like --those inequalities envisioned in the Great Society programs of Lyndon Johnson, for example. Not only are the schools in no position to do all this, the schools should not undertake such tasks because of other reasons. The school is an institution run by the state to promote its citizenship interests, and not for the purpose of eradicating all social injustices. Thus, the schools cannot justify broad based programs aimed at righting all society's wrongs; it must be content to do what it can for the individual, guaranteeing not an equal educational opportunity, but rather that which it can and of right ought to do--to treat all individuals equally in a non-discriminatory way.

This is the same as saying that whereas a child is not entitled to equal educational opportunity at the hands of the state, he or she is entitled while in school to be free from discrimination, either in word or act, by school officials. This was further emphasized in the case of Gault, who was punished because of the double standard which existed between the regular courts of law for adults and those in which juveniles were tried. Juvenile delinquent was a mis-classification, said the

*Curtis*  
 "Neither the Bill of Rights nor the Fourteenth Amendment are for adults alone." Classifying children as second-class citizens was further proscribed in the Tinker (1969) black armband case when the Court declared that children are "persons" under our Constitution, and do not <sup>shed</sup> leave their constitutional rights at the schoolhouse gate. State-operated schools may not be enclaves of totalitarianism. School officials do not have absolute power over their charges.

In order for the State, in the person of school officials to justify prohibition of a particular expression of opinion, it must be shown that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. If there is no disruption, the prohibition cannot be sustained. . . .

The unequivocal wording in which Mr. Justice Fortas framed the opinion in Tinker encouraged the concept, long held in American educational circles, that the child is guaranteed an education at public expense, that in effect, it was the purpose of the law to eradicate differences other than the narrow scope of freedom of expression (symbolic speech, at that). This concept of "equal educational opportunity" was explored in the 1973 Rodriguez case, in which five of the justices rejected the claim that the federal Constitution guarantees such a birthright to every American boy and girl.

The Nixon Four were joined in the majority opinion by Mr. Justice Stewart, who, while admitting that our system of public education "can fairly be described as chaotic and unjust," nevertheless rejected the claim that the "poor" can be recognizable as a classification of persons who are being discriminated against by the state's school funding program. Poor people live in rich districts as well as in poor--what about them? "The Equal Protection Clause confers no substantive rights and creates no substantive

liberties," wrote Mr. Justice Stewart. "Its function, rather, is simply to measure the validity of classifications (emphasis mine) created by state laws. Innovative new thinking is necessary to assure both a higher level of quality and a greater uniformity (emphasis mine) of opportunity. But the ultimate solutions must come from the lawmakers (in each of the states) and from the democratic pressures of those who elect them."

The "bucking-back-to-the-states" decision in Rodriguez started, or perhaps, more accurately, extended the "who-me?" syndrome inherent in the so-called accountability movement in education. It was not the federal government's role to provide an education--that was the duty of each of the states. The majority made it quite clear that they had no reference to a full university "education" at public expense--that is satisfactory if the state wishes to provide such a broad opportunity. The State of Texas was fulfilling a valid state purpose in providing a minimal "schooling" to all of its children, the Rodriguez child included. Since he was receiving the minimal guarantee of education, he was not being discriminated against merely because he happened to live in a poorer district than some other Texas children. In delivering its minimal amount of education to one of its citizens, Texas was not invidiously discriminating, but in fact was living up to its avowed purpose of preparing its citizens to read and write, to vote, to serve on the jury, join meaningfully in the life of the state government, and serve in the armed forces. Beyond that, there was no compulsion for the state to go in education. Of course, a state may not use grouping patterns, or tests, or methods of procedure

in classifying its students which plainly violate federal Constitutional guarantees, but these guarantees are in terms of equal protection and due process and not in the content of the educational programs which a state such as Texas provides free to its junior citizens.

Although education is not a "fundamental right", it has been held by the Supreme Court to be both a "liberty" and a "property" right under the Fourteenth and First Amendments. In Goss v. Lopez, <sup>(1975)</sup> the majority opinion by Mr. Justice White, explained it this way

Appellants contend that because there is no constitutional right to an education at public expense, the Due Process Clause does not protect against expulsions from the public school system. This position misconceives the nature of the issue and is refuted by prior decisions. The Fourteenth Amendment forbids the State to deprive any person of life, liberty or property without due process of law. Protected interests in property are normally 'not created by the Constitution. Rather they are created and their dimensions are defined' by an independent source such as state statutes or rules entitling the citizen to certain benefits. (citing Roth). . . . Here, on the basis of state law, appellees plainly had legitimate claims of entitlement to a public education (citing Ohio statutes). . . . Having chosen to extend the right to an education to people of appellees' class generally, Ohio may not withdraw that right on grounds of misconduct absent fundamentally fair procedures to determine whether the misconduct has occurred. . . .

Finding out whether a student has misbehaved is, of course, a "test" and one which must be administered within the confines of the Bill of Rights. This was emphasized most dramatically in a "tracking" case in 1967, which encouraged ~~RE~~ Judge J. Skelley Wright to explain why the tests being used in the District of Columbia by the school board were constitutionally unacceptable.

Because these tests are standardized primarily on and are relevant to a white middle class group of students, they produce inaccurate and misleading test scores when given to lower class Negro students. As a result, rather than being classified according to ability to learn, these students are in reality being classified

according to their socio-economic status, or--more precisely-- according to environmental and psychological factors which have nothing to do with innate ability. Hobson v. Hansen, 1967.

The clue to the suspect classification was that a disproportionate number of black students was enrolled in the lower track. Conversely, whites made up a much larger proportion of the upper track than would reasonably be expected considering their small numbers in the total population of students. Because the school board had failed to justify its placement practices, the court ordered it to develop a more objective means of grouping its children for instructional purposes.

#### Strict Scrutiny

The first step in challenging a school's testing practice is for plaintiffs to establish a prima facie showing of discriminatory impact upon their liberty and/or property rights. The discrimination alleged is usually in terms of race or ethnicity, and more recently, unequal treatment of the sexes. Upon such a prima facie showing, the burden then shifts to those doing the testing to make some demonstration of the rationality of the testing procedures and the validity of the tests themselves, a departure from traditional equal protection analyses. Where test validity is at issue (does the test measure what it purports to measure?), the defendant must show a strong relationship to the categories being used, such as special education needs of children, or successful employee traits and skills. The case presenting the clearest summary of the requirements for proper validation is United States v. Georgia Power Company, 474 F.2d 906, 1973. The case involved the question of whether tests being administered to workers and

prospective workers in the power company were of sufficient validity to pass constitutional muster. However, the same measures of competency can be assumed to apply in public schools. "A test is not valid or invalid per se," said the Fifth Circuit Court, "but must be evaluated in the setting in which it is used."

The court set up four hurdles which defendant must clear in order to prevail. To clear the first hurdle, defendant must demonstrate that the test has differential validity, i. e., that it has separate validation scores for all minorities on which it is being used. Differential validity is not to be confused with content validity, which is simply the question of whether the test measures characteristics found among persons in the particular job or category. Some of the cases also involve predictive validity, in which performance on the test is highly related to actual job performance. For many teachers and administrators, such sophisticated statistical manipulations are out of the question without expert advice and counsel. Remember, this is only the first of four hurdles which the school officials must clear when testing practices are challenged in court.

To clear the second hurdle, defendant must bring the level of confidence for the test to the .05 level to insure a high level of correlation. This is the same as saying that the probability of obtaining the same test results through mere chance is no greater than one in twenty. School personnel stand to lose many cases at this second step, provided, of course, that they have survived the first.

To clear the third hurdle, the defendant must demonstrate that the testing procedure contains an adequate sample. Under this standard, small

samples tend to be immediately suspect, since the statistical procedures must be sophisticated enough to account for the probability that a full range of selectivity of an impartial nature was used in selecting the relevant sub-groups from the population. Finally, to survive the fourth hurdle defendants must demonstrate that the test has been administered to all the testees under uniform testing conditions, which looks easy but is more difficult than at first appears. Under this standard, the courts will not accept evidence of validated, standardized testing results unless the testing sample, the purposes, and the test conditions used in that validation closely correspond to those in the local use of the test.

Federal courts have established the principle of law that testing may not be used in recently desegregated school systems, regardless of issues of test validity or bias. This rule is to guard against further continuance of the effects of past segregation practices, and applies to intra-school tracking as well as to the maintenance of dual schools. The duration of the ban on testing has been held in some cases to be "until a unitary system is established," which may amount to as long as several years of operation under a unitary system. Plaintiff need not <sup>prove</sup> that testing discrimination was intentional, either. Discriminatory intent does not have to be proved; it is enough to show discriminatory outcomes from testing to prove that the school is engaging in an illegal and unconstitutional testing practice.

Most judges take the position that there is no such thing as a "culture-free" test; those who claim such perfection are immediately saddled with the burden of proof of such a claim. To my knowledge, no one has developed a

"pluralistic" test of sufficient reliability to overcome the presumption that any and all minorities can be equally successful on the test. In one instance, an employer, wishing to avoid supporting his testing practices, listed all his employees as "American," under the heading of ethnic groups, but the court ordered him to come up with appropriate cultural, economic, and ethnic groupings opposite each score so that it could be determined whether he had indeed been discriminatory in his application of the tests in question.

#### Male v. Female

Title IX forbids discrimination on the basis of sex in any educational program receiving federal financial assistance. Although a few issues, most notably competition of girls in athletics have been litigated, Title IX has significance in less publicized areas, such as recruiting, admissions, financial aid, student rules and regulations, student employment, textbook bias, single-sex courses and women's studies programs. Differing treatment for unwed fathers than for unwed mothers would constitute a false test prohibited under Title IX. A district may not require higher entrance scores on tests for girls than for boys. In matters of dress, long hair constraints for boys but not girls would be another example of unconstitutional tests. In one instance, a school district had a requirement that the homecoming "queen" be a virgin--a test one winner failed when she was found to be married and the mother of a small child. Some school practices of requiring more amassed credits for girls than for boys, for graduation clearly fail to meet Title IX requirements. There may be considerable sex bias in counseling programs, also, where well-meaning counselors pass along stereotypes about men and women. Bias may also exist in the tools used by counselors--interest inventories, catalogs, tests, occupational materials,

and the like. In 1972, the American Personnel and Guidance Association passed a resolution calling for the revision of a widely-used vocational interest blank because it discriminated against girls. Courses in health, physical education, home economics, welding and body-shop, and other so-called "one sex" courses now must be open to both sexes. Lack of facilities such as separate restrooms, dressing rooms, or locker space is now no longer a defense against refusal to open such courses to all on an equal basis.

Similarly, Title IX requires equal treatment of those whose native language may be a hinderance to their progress in school. In Lau v. Nichols, the Supreme Court ruled that San Francisco must provide specialized instruction to Chinese children whose language prevented them from understanding English, the language used in the classroom. While neither sex nor language are inherently suspect classifications on their face, if the "effect" of such classifications militates against one sex or a class of individuals, the state must defend its practices therein.

#### Stigmatization Prohibited

Any classification which tends to "stigmatize" a person may immediately become suspect, since its effect may be to destroy the name, reputation, regard of others, or ultimate hope of getting and keeping future employment of an individual. For example, the longtime practice of publishing class rank standings of graduates may stigmatize those who finish in the lower portions of the class. A small but growing number of schools are therefore abandoning the practice. I have heard of no legal challenges to posting honor roll standings, but no doubt the same legal problems could arise were this practice to be challenged.

An example of possible stigmatization occurred in Pennsylvania. A school district had a program called "Critical Period of Intervention (CPIN)", the object of which was to identify potential drug abusers among students in the eighth grade. Although the program was announced in a letter home to parents, most of them did not realize its implications. One of the parents challenged it in court as an invasion of his son's privacy. The court placed heavy reliance at trial on uncontradicted expert testimony by a child psychiatrist that a label of "potential drug abuser" could be a self-fulfilling prophecy, and that test results or a refusal to take the test could result in scape-goating.

The court held for the challenging parent. "The attempt to make the letter requesting consent similar to promotional inducement to buy lacks the necessary substance to give a parent the opportunity to give knowing, intelligent and aware consent," said the court. The parents had been promised confidentiality of information also, but the court held that the district's assurance of confidentiality was not creditable. "When a program talks about labeling someone as a particular type and such a label could remain with them for the remainder of their lives, the margin of error must be almost nil," the court continued. To compound the embarrassment, the court found that the preliminary statistics indicated a high possibility of error in identification of the children in question.

The court recognizes that the Supreme Court has spoken, and many law review authorities have spoken, about a balancing test. What this means is that the court balances the invasion of privacy against the public need for a program to learn of and possibly prevent drug abuse in a society which has become aware of the dangers and effects of drug abuse. This court must balance the right of an individual to privacy

and the right of the government to invade that privacy for the sake of a public interest. In doing so, we strike the balance in favor of the individual in circumstances such as are shown in this case. In short, there is too much of a chance that the wrong people for the wrong reasons will be singled out and counselled in the wrong manner. Merriken v. Cressman, USDC EDPa., September 28, 1973.

#### A Heaven of Ideas

Inherent in all people-grouping practice is the threshold presumption that somewhere out yonder there exists a Heaven of Ideas populated by models which mortals are expected to emulate. If blue-eyed persons are believed to be superior to all others, the outcomes of manufactured tests which measure eye color are suspect. In the law, such an arbitrariness of standard to be applied constitutes an irrebuttable presumption of prior qualification. Since there is no legal way in which to successfully challenge the adequacy of the model, those who fail to measure up to it are concluded to be unfortunate creatures, destined to fill the lower ranks of society. The tests are not at fault, it is the individuals being tested, explained my friend Raymond. Furthermore, since we are supposed to be educators, it is our bounden (some say sacred) duty to apply the plumb line and the level to one and all, and sort them into groups "for their own educational good." These decisions are not to our liking; nevertheless, we are required to live with them, since they come with the territory. It matters little that plumb line and level are suspect, being grounded on mythology, pseudo-science, and divination--we have our duty to do, and do it we must. Like Calvin, today's educator must assume our sacred trust and bring our crooked old world into line with the Heaven of Ideas or lose the game to that Olde Deluder Satan, who waits with baited breath <sup>for us to</sup> ~~test we~~ make a mistake.

Raymond explains it this way. "Americans at present are acting like the Puritans acted. We look on our children as means to an end, the perpetuation of our way of life. Likewise, the Puritans in their day thought children were sent for one purpose: 'for the glory of God.' Today, we may think of them in more secular terms, yet we are guilty of the same blindness. When the Puritan movement began to fail in the 1660's, the Puritan saints were heard to lament, even as some of us do today: 'but we did it all for you!' Through compulsory attendance, taxation, and other constraints, we have built a model of WASP superiority and American invincibility into our consciousness which has become the major task of the schools to perpetuate. Like the Puritans, we have failed to realize that different times call for different needs, and the needs in turn call for different tests by which to measure our progress toward human freedom."

I pointed out to Raymond that the real danger today is not so much in mis-judging the mission of the schools as in avoiding monetary liability for depriving students of their civil rights. Since board members can be held personally liable if they knew, or reasonably should have known, that they are depriving a student of his civil rights, the same standards must of necessity also be applied to teachers and administrators, who may be looked upon as co-conspirators, and held to account for such deprivations. Raymond seemed only partially convinced, so I went on.

"The Supreme Court has held that children are 'persons' under our Constitution. Education is perhaps the most important function of state and local governments. In 1943, the Court asked this question:

Must a government of necessity be too strong for the liberties of its people, or too weak to maintain its own existence? The answer in the past has been in favor of strength. But the Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself, and all of its creatures, boards of education being no exception. That boards are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes. West Virginia Bd. of Education v. Barnette, 1943.

"There I agree with you completely," said Raymond. "Two groups-- teachers and pupils--have won greater freedoms in the civil rights movement than ever before. But what they've won is not the right to an education, or in the case of teachers, to continued employment, but rather the right to be treated as individuals, the right not to be discriminated against. Because illegal testing may infringe upon the civil rights of both these groups, I think we're going to have to look more realistically at all testing programs in the schools. This will take some soul-searching by educators, and a willingness to change, to de-mythologize the testing function, and to provide plenty of machinery for due process and grievance procedures which will withstand the constraints of the constitution. The winners will be the schools themselves."

I couldn't agree more. I'll be looking forward to that day when true equality in testing can be realized. When that glad day comes, however, I suspect that Raymond won't hang up his gloves. He's the type of person who has to have a cause. Without testing to turn him on, Raymond will go in search of other worlds to conquer, other fish to fry, other mountains to climb.

In the meantime, I'm grateful for good, solid friends like Raymond, who warn less-perceptive citizens to stay away from that attractive nuisance where, as Raymond says, "People tend to play God."

In calling Raymond the "devil's advocate", I am not putting him down--in fact, just the opposite effect is intended. The term comes down to us from antiquity, from the Latin, Advocatus Diaboli, the person appointed in the Roman Catholic Church to oppose rigorously the claims of a candidate for canonization. No longer is the term limited to ecclesiastical matters--it has now spread into other disciplines. The use of an educational gadfly upon the Establishment's epidermis reminds us all that we are but mortals, and that, as Kant wrote, "No virtue is ever so strong that it is beyond temptation." What seems best to augment our spiritual forces is a temptation which we have met and overcome. In Raymond, we have the kind of friend who after all loves us and in good conscience refuses to let us get too far out into Space.

You might conclude from it all that what this old world needs is not more brain-probing tests, but perchance, more friends like Raymond.

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